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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,019	12/20/2001	Bodo Kuhn	3955/59156-101	1141

7590 06/09/2003

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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/027,019

Applicant(s)

KUHN ET AL.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 7-9 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 10 is/are rejected.
- 7) ☐ Claim(s) is/are objected to.
- 8) ☐ Claim(s) are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. This application contains claims 11-23 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall (U.S. Patent 5,586,033).

The Hall '033 patent discloses an agricultural machine having a crop processing working unit (32), a plurality of crop transport units (40, 42) operatively assembled as a straw walker step, a cleaning device (48) having a forced-draught fan (50), and an exhaust fan (44) located after the cleaning device. The transport units are spaced apart to define a crop through gap. The transport units (40, 42) are located between the forced-draught fan and the exhaust fan and the forced-draught fan produces an air stream which is directed from the forced-draught fan to the exhaust fan. The forced-draught fan creates two air streams – divided by the cleaning device (48).

Regarding claims 2, 10: The exhaust fan (44) is a crop comminutor (the fan will inherently comminute some of the discharged crop) as well as a crop distributing device.

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Regarding claims 3, 4, 6: The forced-draught fan and the exhaust fan generate an air stream speed. The air stream speed is adjustable (See Fig. 3 – Fan Speed). The air stream speed is determined as a function of crop throughput or moisture content in the crop (Fig. 4a). The agricultural machine includes an air speed measuring device (see Fig. 3 – Fan Speed – actual).

Allowable Subject Matter

4. Claims 5, 7-9 are allowed.

Response to Arguments

5. Applicant's arguments filed 4/24/03 have been fully considered but they are not persuasive.

In response to Applicant's arguments that the Hall '033 patent does not have a housing for the exhaust fan, this limitation is not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Furthermore, even if the instant claims did include a limitation of an exhaust fan housing, such a limitation would not make the instant claims patentable in light of the enormous prior art teachings of combines with exhaust fan/straw choppers having housings.

Contrary to Applicant's assertion, the exhaust fan of the Hall '033 patent does generate at least some air stream. As one familiar with agricultural harvesters would recognize, exhaust fans like that of the Hall '033 patent are driven at high speeds – they must be so driven so as to effectively spread the crop residue over a wide path and avoid the problem of creating windrows behind a harvester. In light of simple fluid mechanics it is obvious that if the exhaust fan is forcing crop residue (and air) outward from the combine, then the fan must be drawing air (and

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crop residue) into it. The exhaust fan of the Hall '033 patent may not be as effective at generating airflow as an exhaust fan enclosed in a housing, but it does generate airflow.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

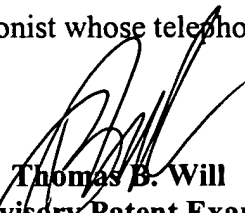
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 305-3579.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
6/3/03

Nathan S. Mammen